

Ward and Smith Wins Case of First Impression Addressing the Role a Parent's Deployment Status May Play in Child Custody Disputes

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Ward and Smith attorneys Chris Edwards and Alex Dale scored a victory in an appeals case that has greater implications for military members in custody disputes in North Carolina.

"Custody agreements are already a stressful, emotional, and complex ordeal," Alex stated. "But when one or both parents are in the military, the situation becomes even more challenging, and sometimes even more contentious, like in *Munoz v. Munoz*."

Chris and Alex represented the Father, who the trial court had awarded permanent physical custody of his daughter, M.M. The North Carolina Court of Appeals affirmed the trial court's custody order, allowing the Father to retain custody of M.M. The Court's decision ended a years-long battle stemming from the Mother's potential deployment to Iraq and the Father's desire to move to the West Coast.

In 2018, the Mother, a member of the U.S. Army, and Father separated because she was facing deployment. They entered into a temporary custody order by consent, which gave the Father primary physical custody of M.M. This arrangement allowed the Father and his daughter to move to California, where his family could provide childcare while he was working.

After the move, the Mother learned that she would not be deployed, and she then filed a motion to set aside the consent order. The trial court entered a new temporary order after a hearing, again awarding physical custody to the Father. Less than a year later, the trial court would award permanent physical custody to the Father.

The Mother appealed on two grounds.

First, She argued that the court failed to properly consider the *Ramirez-Barker* factors, a set of criteria to assess whether relocating would be in the child's best interests. When applying these factors, a trial tribunal asks:

- whether the relocation will improve the life of the child;
- what are the motives of the custodial parent who is requesting the move;
- does the noncustodial parent have a legitimate basis for opposing the relocation; and,

- what is the likelihood that a realistic visitation schedule can be arranged?

In this case, the appellate court noted that "the Ramirez-Barker factors are not a mandatory checklist for trial courts; as always, the primary objective is the determination of the best interest of the child."

In its findings, the trial court had focused on each parent's support system and found that both parties relied on family assistance. However, the Father had family available and was living with them at the time. The Mother had no family or support system close by. Therefore, the Court of Appeals could not "say that the Mother has shown that the trial court abused its discretions on this issue."

Second, the Mother asserted that the trial court violated N.C. Gen. Stat. § 50-13.2(f). This statute provides special protection for armed services members in custody matters by prohibiting courts from considering a parent's possible future deployment as the *only* basis in determining the child's best interest.

Here, the appellate court concluded that § 50-13.2(f) does not prevent trial courts from considering it as one of many factors. Since the trial court focused primarily on the parents' respective support systems, referencing the Mother's potential deployment only once, the appeals court was satisfied that the Mother's possible deployment was not used as "the only basis in determining the best interest" of the child.

The Court of Appeals affirmed the permanent custody order.

The North Carolina General Assembly adopted § 50-13.2(f) as part of the Uniform Deployed Parents Custody and Visitation Act. This uniform act has been adopted by at least 10 states, including North Carolina. The Court of Appeals' decision in *Munoz* appears to be the first decision nationwide addressing this provision of the uniform act. "This was a very significant case because it's apparently the first to interpret the general statute involving military parents," remarked Chris. "However, even with the clarity the court provided, it is still very difficult to say what will happen in these types of custody cases. It's always best to consult with an experienced family law attorney."

Chris Edwards and Alex Dale are both appellate attorneys in Ward and Smith's Wilmington office. If you need assistance with any appeal, contact a member of our Appellate Team. If you need assistance with child custody matters, divorce, or separation, contact a member of our Family Law Team.